



BALLOT**PEDIA**

CHEVRON **DEFERENCE**

**UNDERSTANDING THE LEGAL
DOCTRINE AND ITS EFFECT ON
AGENCY AUTHORITY**

February 2024

***Chevron* Deference: Understanding the legal doctrine and its effect on agency authority**

Summary

This document guides you through the nuts and bolts of *Chevron* deference, including its history, application, evolution, leading arguments for and against, and its uncertain future.

By the end of this reading, you will have an understanding of the following concepts:

- What is deference?
- What qualifies as a reasonable interpretation?
- Case law that influenced the scope of *Chevron* deference doctrine
- Principal arguments in support of and opposition to the exercise of *Chevron* deference
- What does the future hold for the *Chevron* doctrine?

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***Chevron* Deference: Understanding the legal doctrine and its effect on agency authority**

What is *Chevron* deference?

Chevron deference is one of several deference doctrines developed by the U.S. Supreme Court over the course of the 20th century. Others are *Skidmore* deference and *Auer* deference.

The *Chevron* doctrine is named for the 1984 case *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, in which the U.S. Supreme Court set forth the legal test to determine whether a court should defer to an agency's interpretation of a statute. Courts are expected to refrain from imposing a statutory interpretation unless the agency interpretation is determined to be unreasonable.

Justice Antonin Scalia summed up *Chevron* deference in a 1989 lecture at the Duke University School of Law as "the principle that the courts will accept an agency's reasonable interpretation of the ambiguous terms of a statute that the agency administers."

Deference applies in cases of judicial review, i.e., when a plaintiff accuses an agency of unlawful action. In such cases, the court must decide whether the agency was authorized to act as it did. However, Congress often passes broadly worded legislation that requires agencies to fill in the details of rule-making and enforcement. The degree of interpretation is a direct function of lawmakers' imprecision in crafting statutory language.

What qualifies as a reasonable interpretation?

A reasonable interpretation of a statute is one that is not arbitrary, capricious, or contrary to the statute.

This standard of review originated in the Administrative Procedure Act of 1946 (APA). The act instructs courts to invalidate any agency actions under review that are found to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

Case background: the Clean Air Act and the bubble concept

On October 14, 1981, the Environmental Protection Agency (EPA) implemented the 1977 amendments to the Clean Air Act, in which the agency put forth a new definition of the term stationary source.

The new definition of stationary source allowed states to treat all pollution control devices within an industrial plant as a single stationary source rather than as distinct entities. In other words, all pollution-emitting devices within the same industrial facility could be grouped together as though they were encased in a single bubble. Under the bubble concept, equipment could be installed or modified within a facility without meeting the new source requirements as long as the change did not increase the plant's total emissions.

The Natural Resources Defense Council (NRDC) challenged the new regulations in November 1981, arguing that the process only maintained air quality when the goal of the Clean Air Act was to improve air quality. The United States Court of Appeals for the District of Columbia Circuit agreed with the NRDC and set aside the regulations. Chevron U.S.A. Inc. joined with a group of affected manufacturers to appeal the decision and argue in support of the regulation.

Case decision: the development of *Chevron* deference

Justice John Paul Stevens delivered the opinion for a unanimous six-person court. (Justices Thurgood Marshall and William Rehnquist recused themselves from the case without explanation. Justice Sandra Day O'Connor did not take part in the decision because the estate of her father owned stock in one of the affected parties.) The ruling upheld the EPA's statutory interpretation as reasonable, and thus proper, and held that the D.C. Circuit Court erred in applying its own interpretation of the agency's authority over the EPA's reasonable construction.

The opinion also presented a two-part test to determine whether a court should defer to an agency's interpretation of a statute:

"First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.

If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."

The justices also directed the lower courts to exercise discipline in cases in which the statutory grant of authority to an agency is implicit rather than explicit. “In such a case,” Justice Stevens wrote, “a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.”

2001: Supreme Court narrows application of *Chevron* deference

In *United States v. Mead Corporation*, the court ruled 8-1 that *Chevron* deference only applied to regulation and enforcement actions--and not agency guidance, policy statements or other administrative actions. Justice Scalia dissented from the majority, arguing that the decision deviated from the historical understanding of *Chevron* deference by requiring courts, rather than agencies, to resolve statutory ambiguities in congressional delegations of authority.

2013: Supreme Court expands scope of *Chevron* deference

In *City of Arlington v. FCC*, the United States Supreme Court held that *Chevron* deference extends to an agency's interpretation of its own jurisdiction. (In this instance, the court recognized the FCC's reading of statute as authorizing it to set time limits on cities processing wireless network applications.) In the dissent, Chief Justice John Roberts, joined by Justices Anthony Kennedy and Samuel Alito, argued that the court should not grant deference until it had first decided whether deference was justified.

He claimed that the majority improperly expanded *Chevron* deference to include agency determinations of whether Congress has given the agency interpretive authority over a statute. Roberts rejected the majority's framing of the question as one concerning jurisdiction and said the issue was about whether the FCC had the legal authority to administer the scrutinized provision. Roberts argued that the opinion expanded the power of the administrative state and signaled that some justices might be willing to limit the *Chevron* doctrine.

2015: Supreme Court holds that *Chevron* deference does not apply to major questions

In *King v. Burwell*, the United States Supreme Court held that *Chevron* deference does not apply to questions of great economic and political significance. The case questioned whether the Affordable Care Act permitted the Internal Revenue Service (IRS) to grant tax credits to individuals who purchased their health insurance from the federal health insurance exchange rather than the state exchanges. The United States Court of Appeals for the Fourth Circuit applied *Chevron* deference and deferred to the IRS' interpretation of the statute, which stated that tax credits were available for plans from both state and federal exchanges. The U.S. Supreme Court upheld the Fourth Circuit's ruling, but declined to apply *Chevron* deference. “Whether those credits are available on Federal Exchanges is thus a question of deep ‘economic and political significance’ that is central to this statutory scheme,” wrote Roberts in the opinion. “Had Congress wished to assign that question to an agency, it surely would have done so expressly.”

2015: Supreme Court further narrows *Chevron* deference

In *Michigan v. Environmental Protection Agency*, the United States Supreme Court ruled that the EPA had strayed far beyond a reasonable interpretation of the Clean Air Act when the agency ignored costs in crafting power plant regulations. In his concurrence, Justice Clarence Thomas stated that *Chevron* deference "wrests from Courts the ultimate interpretative authority to 'say what the law is,' and hands it over to the Executive."

Arguments in support of *Chevron* deference

***Chevron* deference recognizes agency expertise**

Agency officials possess high-level knowledge about authorizing statutes and, therefore, are uniquely qualified to interpret ambiguities. By comparison, judges cannot be agency experts for the entire executive branch.

***Chevron* deference is a valid extension of the authority granted agencies by Congress**

Congress delegates rule-making and enforcement authority to agencies through statutes. Therefore, interpreting said statutes is a valid exercise of agencies' responsibilities. Administrative law scholar Jonathan Siegel summarizes the point in the following: "In his classic article, 'Marbury and the Administrative State,' Professor Henry Monaghan made the key observation that ambiguity in a statute entrusted to an administrative agency for enforcement is best understood as a delegation of power to the agency. A year later, *Chevron* endorsed this concept by holding that an ambiguous provision in an agency statute should be deemed to constitute an implicit delegation of power to the agency to fill the gap left by Congress. Thus, the most basic reason why agencies should have the power to resolve ambiguities in provisions of statutes they administer is that Congress should be understood to have delegated this power to agencies."

***Chevron* deference adheres to the separation of powers**

Chevron deference adheres to the separation of powers doctrine through valid congressional delegations of legislative authority to agencies of the executive branch. The courts would be out of line to interfere when Congress has delegated authority to agencies.

Administrative law scholar T.J. McCarrick quoted the U.S. Supreme Court's decision in *City of Arlington v. FCC* in his summary of this argument: "[T]he *Chevron* framework also reinforces separation-of-powers norms. Though rules and adjudications 'take "legislative" and "judicial" forms,' agency action in a zone of ambiguity is an exercise of executive power. But only such power as the legislature confers. 'Congress knows how to speak in plain terms when it wishes to circumscribe, and in capacious terms when it wishes to enlarge, agency discretion.' And when it comes to regulation, courts should not do for Congress what Congress can do for itself."

Arguments in opposition to *Chevron* deference

***Chevron* deference is unconstitutional because it violates the separation of powers**

Chevron deference violates the separation of powers established in the U.S. Constitution. The separation of powers vests government authority in three distinct branches (executive, legislative and judicial) in order to restrain overreach and abuses of power. *Chevron* deference doctrine transfers judicial power to the executive branch and ignores the court's obligation to interpret the law and serve as a check on the other political branches.

As law professor [Philip Hamburger](#) wrote, "When judges defer to agency interpretations, they depart from their judicial office or duty, under Article III of the Constitution, to exercise their own independent judgement."

***Chevron* deference violates administrative law and legal precedent**

Chevron deference violates the [Administrative Procedure Act \(APA\)](#) and legal precedents, including the early tradition of de novo review of agency actions and the [nondelegation doctrine](#).

As administrative law scholar [Aditya Bamzai](#) observed, "[W]hen Congress enacted the APA, it ... did not, however, incorporate the rule that came to be known as *Chevron* deference, because that was not (at the time) the traditional background rule of statutory construction. Under the traditional approach, a court would 'respect'—or, to use modern parlance, 'defer to'—an agency's interpretation of a statute if and only if that interpretation reflected a customary or contemporaneous practice under the statute."

Administrative law scholar [Christopher Walker](#) argued that "Article I vests Congress with 'All legislative Powers,' yet *Chevron* deference encourages members of Congress to delegate broad lawmaking power to federal agencies. In doing so, Congress further frustrates the values of the nondelegation doctrine."

A Period of Uncertainty

Chevron deference has been seen as "entering a period of uncertainty, after long seeming to enjoy consensus support on the Court," according to administrative law scholar Michael Kagan. What has emerged since 2015, according to Kagan, has been a period "in which it seems that the Court may be more willing to explicitly refine the doctrine, to limit its application in certain ways, and to articulate new exceptions."

Chevron deference was once hailed by Kenneth Starr during the Reagan administration as a Magna Carta for use in federal administrative agency deregulation. In subsequent administrations, *Chevron* deference has been a tool for both deregulatory and regulatory efforts. The Obama administration, for instance, relied on *Chevron* deference in its case to support the Affordable Care Act.

Changing Views

Chevron deference was once supported by conservative-leaning legal authorities, including Justices Clarence Thomas and Antonin Scalia. Thomas, however, has reversed his views in more recent years. He signaled his early position in the 2005 opinion in *National Cable & Telecommunications Ass'n v. Brand X Internet Services*, seen as "one of the Court's most robust articulations of the commandment for judges to defer to administrative agencies," according to Kagan. But Thomas performed an about-face in his 2015 concurrence in *Michigan v. Environmental Protection Agency*, arguing that *Chevron* deference "wrests from Courts the ultimate interpretative authority to 'say what the law is,' and hands it over to the Executive."

Prior to joining the U.S. Supreme Court, Justice Neil Gorsuch declared *Chevron* to be "no less than a judge-made doctrine for the abdication of the judicial duty." Gorsuch's opposition to deference regimes became the model for Trump administration judicial appointments.

But opposition to *Chevron* has materialized along a broader ideological spectrum. According to Kagan, "[i]f one counts *King v. Burwell*, all nine justices have at least once signed an opinion explicitly holding that *Chevron* should not apply in a situation where the administrative law textbooks would previously have said that it must apply."

There had been uncertainty since the inception of *Chevron* about why the courts had appeared to apply deference in one case but not another. Kagan argued that prior to 2015 "no justice had announced any desire to formally abandon *Chevron*, the dominant streams of administrative law scholarship were reluctant to draw doctrinal conclusions from the justices' failure to practice what they preached."

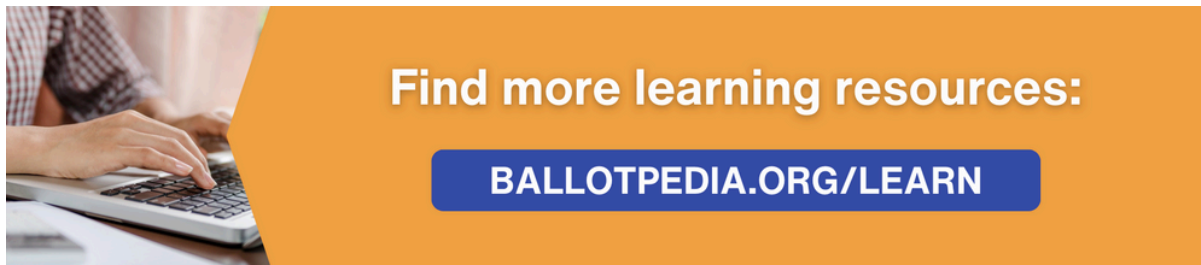
We can conclude, therefore, that the future of *Chevron* deference is unclear. The U.S. Supreme Court declined to reconsider the doctrine in the 2018 case *Weyerhaeuser Company v. United States Fish and Wildlife Service*, narrowly centering its ruling instead on judicial review of the discretionary agency action in the case. We will continue to monitor changing attitudes toward *Chevron* deference in the hopes that more clarity might be on the horizon.

Continued reading:

Thank you for downloading our PDF on *Chevron* deference.

Check out the following Ballotpedia pages to dive deeper into the key concepts of this report:

- [Deference](#)
- [Chevron Deference](#)
- [Administrative Procedure Act](#)
- [Arbitrary-or-Capricious Test](#)
- [United States Court of Appeals for the District of Columbia Circuit](#)
- [Natural Resources Defense Council](#)
- [Judicial deference: a timeline](#)
- [Nondelegation doctrine](#)



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